

May 29, 2018

Rakuten Kobo, Inc.
Legal Department

Re: Updated Contact Information

Dear Micah Bonte-Gelok:

I am writing in response to a complaint by Blushing Books of copyright violation by books published under the name Zoey Ellis – “Crave to Conquer” (Myth of the Omega 1), published on or about January 18, 2018, “Crave to Capture” (Myth of the Omega 2), published on or about March 20, 2018 and “Crave to Claim” (Myth of the Omega 3), set for publication on or about May 23, 2018. I have been retained by Quill Ink Books Limited and Ms. Zoey Ellis (a pen name) (hereinafter, Ms. Ellis) to represent their interests with regard to this matter.

The representations by Blushing Books are at best false and are at worst intentional misrepresentations and libelous slander. There are no violations of any copyright and all books should be restored for sale on your site.

First, some basic principles. Copyright is a form of protection provided by the laws of the United States to the authors of “original works of authorship” that are fixed in a tangible form of expression. An original work of authorship is a work that is independently created by a human author and possesses at least some minimal degree of creativity. Copyright ***does not protect***: 1) ideas, procedures, methods, systems, processes, concepts, principles, or discoveries, or 2) titles, names, short phrases, and slogans. See WORKS NOT PROTECTED BY COPYRIGHT (United States Copyright Office Circular 33).

I have reviewed an email from Blushing Books in which it asserts similarities between works for which they hold a copyright and the works written by Ms. Ellis, which I presume is the reason you removed the books for sale on your site. The issues with this purported DMCA notice are as follows:

1. The assertions of similarities in story arc are simply incorrect, false and/or misleading on several points. Moreover, many of alleged similarities are simply part of the trope. For a more complete description of the trope, please see <https://fanlore.org/wiki/Alpha/Beta/Omega> and other sites. (As above noted an idea – such as a trope – cannot be copyrighted.)

2. The examples of purported text similarities in fact show that Ms. Ellis' titles do not violate Blushing Books alleged copyrights. The examples of text in the complaint show no word-for-word copying of text. And the Blushing Books examples are taken out of context, with text both before and after the selected quotes being completely different. All of the examples do not support a copyright violation, and in fact subject Blushing Books to civil and criminal action under 512(f) of the Copyright Act.
3. The reviews cited by Blushing Books refer to "feelings" and "impressions" that the involved books are similar. Similarities in stories do not constitute a violation of copyright. (Example: EL James- 50 Shades of Grey and Sylvia Day – Crossfire series are very similar stories and there is no violation of copyright.) Further, these "reviews" are extremely dubious in light of evidence that Ms. Cain (Blushing Books' author) has manipulated such reviews in the past. (Please see attached Exhibit A, posts by Ms. Cain on Facebook.)
4. Most incredibly, Blushing Books falsely quotes a third book, which is *not yet published* and thus cannot even have been reviewed by Blushing Books, much less to determine whether its alleged copyright was violated. Blushing Books attributes text to "Crave to Claim" that simply does not appear in that work.
5. Furthermore, all claims and examples provided by Blushing Books are sourced from only one book by Ms. Ellis, Crave to Conquer, but were used as evidence to allege violations of three of Ms. Cain's books (one of Ms. Ellis's books which hasn't been published yet but was set for preorder). Upon information and belief these claims are misleading and a clear violation of the DMCA.
6. As to other allegations on the DMCA they are irrelevant and provide no legal basis for a take down notice.

No intellectual property or copyright material of Blushing Books has been used in Ms. Ellis' books. As noted above, an idea nor a trope can be copyrighted. To be sure, each of these books involves a love story between a man and a woman, which ends happily in Ms. Ellis's books (due for publication May 23, 2018) but ends unhappily in Ms. Cain's third book. (Ms. Cain kills both main characters in Reborn). Ms. Ellis's books are set in an epic fantasy setting with magic, while Ms. Cain's books are set in a sci fi world with technology. Allegations of copyrights violations are unfounded and in fact all the plot lines and the characters in the Myth of the Omega were written by and belong to Ms. Ellis. Ms. Ellis has applied for copyrights subject to the Copyright Act and at no time has she been associated with Blushing Books. Moreover, the "Omegaverse" trope is an

established sub-genre with multiple publications written under the genre, both before and after the Blushing Books works.¹

Ms. Ellis intends to pursue all avenues against Blushing Books for all misrepresentations in the false and misleading DMCA take-down notices and pursue penalties under Section 512(f) of the DMCA. The take down of these books so close to the publication of Ms. Ellis' third book is extremely suspicious and appears to be part of a campaign.

Furthermore, subject to the DMCA, please take this communication as the Counter-Notice per Section 512(g) and be on notice that consistent with U.S. law, Ms. Ellis is obliged to make the statement: "I swear, under penalty of perjury, that I have a good-faith belief that the material was removed or disabled as a result of a mistake or misidentification of the material to be removed or disabled." Please be advised that this letter is such notice.

You can contact me at 214-213-5554 and/or margarita.coale@gmail.com or my client Zoey Ellis if you have any questions. And please contact me if you require an additional information or material you need to resolve this matter, aside of this counter-notice and the information you already have.

This matter is of utmost importance and I appreciate you expediting the republication of these books as soon as possible.

Identified materials and dates of publication:

- (1) Crave to Conquer (Myth of the Omega 1), published on or about January 18, 2018;
- (2) Crave to Capture (Myth of the Omega 2), published on or about March 20, 2018; and
- (3) Crave to Claim (Myth of the Omega 3), set for publication on or about May 23, 2018.

¹ The Omegaverse trope has been clearly established as a fan fiction creation and has been used by many authors including Patricia Briggs. Omegas are rare, Alphas are the largest, Betas are the second in command. This universe doesn't belong to a particular author nor can any entity hold copyright of it. See, e.g., <http://the.omegaverse.tumblr.com/Rundown/> and many other sites that describe this trope.

Subject to the requirement to under Copyright law on Counter-Notices Section 512(g) we agree that service can be made to Ms. Ellis's attorney and by her digital signature hereby attach Ms. Ellis gives consent of such service to the following place:

Law Office of Margarita T.B. Coale
3419 Westminister Suite 298
Dallas, Texas 75205

Ms. Ellis also gives consent to the jurisdiction of a federal in the federal district where Rakuten Kobo Inc. is located.

Digitally Signed By:

Zoey Ellis

May 29, 2018

Margarita T.B. Coale

May 29, 2018

Exhibit A



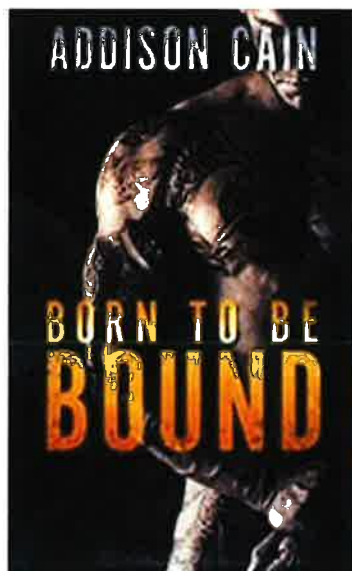
Addison Cain shared a link.

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👤 Admin · February 21

Anyone in the mood to upvote some 5 stars and down vote some 1 stars?

<https://www.amazon.com/Born-Bound-Alphas-Claim-Book-ebook/dp/B01E1HQ57O>



★★★★★ (313 Reviews)

AMAZON.COM

Born to be Bound (Alpha's Claim Book 1)

Surrender is not survival. Claire is desperate. Her once thriving city lies in ruins. The str...

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